SECTION 15000 LOCAL AGENCY MILITARY BASE RECOVERY AREA NET OPERATING LOSS

References 17276.1(a); 17276.5(a); 24416.1(a); 24416.5(a)

Taxpayers are required to annually report their income and expenses. Due to possible fluctuations in income and expenses, a taxpayer may have substantial profits in one year, while losses in another. In years where expenses exceed income, a net operating loss (NOL) occurs.

For each taxable year beginning on or after January 1, 1995, a qualified taxpayer engaged in a trade or business within a designated Local Agency Military Base Recovery Area (LAMBRA) may elect to carry forward 100% of its NOLs for a 15-year period.

A LAMBRA NOL cannot be generated until the first taxable year beginning on or after the area has been officially designated as a LAMBRA.

Prior to January 1, 1998, the applicable LAMBRA NOL code sections were:

- 17276 - 17276.1, 17276.2(c), 17276.3
- 24416 - 24416.1, 24416.2(c), 24416.3

For taxable years beginning on or after January 1, 1998, the LAMBRA NOL code sections are:

- 17276 - 17276.1, 17276.3, 17276.5
- 24416 - 24416.1, 24416.3, 24416.5

The following references in this chapter are to the new code section numbers.

15100 Geographic Boundaries and Designation Dates

For a listing of LAMBRAs, see "*LAMBRA Locations and Designation Dates*" EDAM 1320. To verify an address, refer to EDAM 1300.

15200 Qualified Taxpayer

References 17276.5(a); 17276.5(a)(3); 24416.5(a); 24416.5(a)(4)

EDAM 15210	Pass-Through Entities
EDAM 15211	S Corporations
EDAM 15212	Flow-through Losses
EDAM 15213	Net Increase in Jobs Requirement

For purposes of the LAMBRA NOL deduction, a qualified taxpayer includes a person or entity that is engaged in a trade or business within a LAMBRA and within the first two years of commencing business within the LAMBRA, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA (see EDAM 15213).

Taxpayers doing business in an area that was previously not a qualified area, but later designated as qualified, are allowed to utilize the special tax incentives for the taxable year beginning on or after the date the area is designated as a LAMBRA.

Further, the taxpayer, for the first two taxable years, must have a net increase in jobs of one or more employees in the LAMBRA and California. See EDAM 15213.

15210 Pass-Through Entities

In the case of any "pass-through entity", the determination of whether a taxpayer is a qualified taxpayer is made at the entity level.

15211 S Corporations

References 23802(d)(1)-(2)

For qualified taxpayers electing S corporation status *after* the designation of the LAMBRA, the qualified NOL attributed to the C corporation years cannot offset S corporation net income.

15212 Flow-through Losses

References 17087.5; 17087.6; 17851; 23800; 24271

The income and loss that will flow through to a shareholder, beneficiary, partner, or member, retains the same characteristics as it had with the pass-through entity.

The election (see EDAM 15300) to claim an NOL must be made by the entity and each investor on their respective returns. The election by the entity to utilize the LAMBRA NOL does not extend to, or bind the investor to utilizing the LAMBRA NOL. The investor may utilize the LAMBRA NOL if the entity utilized the general NOL provisions, or had no NOL. Each taxpayer must determine if they in fact have a NOL, and then decide whether the general or LAMBRA NOL will be utilized.

15213 Net Increase in Jobs Requirement

References 17276.5(a)(3); 24416.5(a)(4)

See EDAM 12625.

15300 Making the Election

References 17276.1(b); 17276.5(b); 17276.5(c); 17276.5(d); 24416.1(c); 24416.5(b); 24416.5(c); 24416.5(d)

Qualified taxpayers must make an election to claim the LAMBRA NOL. The election must be filed with the original return, timely filed, for the taxable year in which the NOL is incurred. The election is irrevocable.

If the taxpayer is eligible to qualify for an NOL under more than one section (operation in more than one economic development area, new small business etc.), the taxpayer must choose which section to elect. Taxpayers are prohibited from carrying over any other type of NOL from the same tax year other than the loss from the subdivision elected.

Failure to elect to compute the NOL deduction under Section 17276.1 or 24416.1 will cause the NOL to be subject to the limitations and restrictions under Section 17276 or 24416 (general NOL).

The taxpayer’s makes the election by using:

- Form FTB 3807 – Local Agency Military Base Recovery Area Deduction and Credit Summary.

In addition, the form FTB 3807 must be filed for each year in which the NOL deduction is taken.

15400 LAMBRA NOL Computation - General Provisions

References 17276.1; 17276.5(a)(4); 24416.1; 24416.5(a)(5)

A LAMBRA NOL is the loss attributable to the qualified taxpayer's business activities within a LAMBRA, prior to the LAMBRA expiration date. LAMBRA NOLs are determined under IRC § 172, as modified by CR&TC §17276.1, 17276.5, 24416.1, and 24416.5.

15410 LAMBRA NOL Limited by General NOL

References 17276; 24416

The LAMBRA NOL is compared to the NOL computed under the general NOL provisions of Section 17276 / 24416, *prior* to the 50% reduction. The LAMBRA NOL carryover is limited to the lesser of the LAMBRA NOL or the general NOL (prior to the 50% reduction). **NOTE:** If the LAMBRA NOL is limited by the general NOL amount, (prior to the 50% reduction), the amount can still be characterized as an LAMBRA NOL and allowed to be carried over at 100% for 15 years. An election must be made to characterize the NOL as a LAMBRA NOL.

Example: Corp. B incurred the following loss:

Income from business operations	$160,000
Interest from investment which is unrelated to Corp. B's business operations	15,000
Expenses of business operations	(189,000)
Net loss	**($14,000)**

To determine the NOL carryover attributed to the LAMBRA business operations, the following must be done:

1. Determine NOL per CR&TC § 24416 (prior to 50% reduction)
2. Determine NOL per CR&TC § 24416.5 (remove non-business items)

The NOL carryover is limited to the lesser of the general NOL (item 1) or the LAMBRA NOL (item 2) above.

1. CR&TC § 24416 "general" NOL - prior to 50% reduction

Net loss of Corp. B	($14,000)

2. CR&TC § 24416.5 LAMBRA NOL - exclude non-business income/loss

Income from operations	$160,000
Expenses of operations	(189,000)
Net loss of Corp. B (LAMBRA)	($29,000)

Pattern 1: Assume Corp. B operates entirely within the LAMBRA. Corp. B is allowed to carry over the lesser of the "general" NOL, or the LAMBRA NOL; in this case $14,000.

Pattern 2: Assume Corp. B conducts 40% of its total business operations in the LAMBRA. Because Corp. B only has 40% of its business operation in the LAMBRA, the $29,000 business loss must be apportioned before comparing it to the "general" NOL. In this example, the LAMBRA loss is $11,600 ($29,000 x 40%). Corp. B is allowed to carry over the lesser of the "general" NOL, or the LAMBRA NOL; in this case, $11,600.

15500 LAMBRA NOL - Loss Attributed to Business Activity

References 17276.5(a)(4); 24416.5(a)(5)

EDAM 15510	Property Factor – Loss Apportionment
EDAM 15520	Payroll Factor – Loss Apportionment
EDAM 15530	Apportionment – Combined Groups
EDAM 15540	Apportionment – Combined Groups
EDAM 15550	Apportioning for Personal Income Tax Taxpayers

A LAMBRA NOL is the loss attributable to the qualified taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. Non-business income and/or loss are excluded from the calculation of the LAMBRA NOL.

If a business is located within and outside of a LAMBRA, the taxpayer must determine the portion of the total business loss that is attributable to the LAMBRA.

- Business loss is defined under the provisions of the Uniform Division of Income for Tax Purposes Act (UDITPA).
- Components of the factors are defined under the provisions of UDITPA.

For taxpayers conducting business operations within and without a LAMBRA, business loss is apportioned to the LAMBRA by multiplying the worldwide business loss by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two (2).

15510 Property Factor – Loss Apportionment

The property factor is a fraction.

- The numerator of the property factor is the average value of the real and tangible personal property owned or rented and used or available for use by the taxpayer *within the LAMBRA* during the taxable year.
- The denominator is the average value of all real and tangible personal property owned or rented and used or available for use during the taxable year *worldwide.*

Rented property is valued at eight (8) times the net annual rental rate. The net annual rental rate is the total rent paid for the property, less any subrental rates paid by subtenants.

15520 Payroll Factor – Loss Apportionment

The payroll factor is a fraction.

- The numerator of the payroll factor is the total compensation paid to the taxpayer's employees working within the LAMBRA during the taxable year.
- The denominator is the total compensation paid to employees working *worldwide* during the taxable year.

Example - Two-factor apportionment: For the taxable year ending 12/31/99, Corp. A operates within and outside an LAMBRA. Corp. A's business loss of $13,000 needs to be apportioned to the LAMBRA. The following amounts apply to Corp. A's property and payroll:

LAMBRA Property	$40,000
Worldwide (WW) Property	$100,000
LAMBRA Payroll	$5,000
WW Payroll	$10,000

LAMBRA Property/WW Property	=.40	
LAMBRA Payroll/WW Payroll	=<u>.50</u>	
	.90/2 = .45	LAMBRA Apportionment Factor

Business loss	$(13,000)
Apportionment Factor	<u>x 0.45</u>
LAMBRA NOL	$(5,850)

15530 Apportionment – Combined Groups

For members of a combined group, the LAMBRA NOL calculation will be based on the combined groups worldwide business loss (before CA apportionment). The numerator of the apportionment formula will be based on each LAMBRA taxpayer's separate LAMBRA payroll and property amounts, and the denominator will be based on the combined groups worldwide payroll and property amounts.

Example: For the taxable year ending 12/31/99, Parent Corporation A has two subsidiaries, B and C. Corporations A and B operate within an LAMBRA. The combined group operates within and outside California and apportions its income or loss to California using Schedule R. The combined group's business loss is $1,000,000.

Business loss apportioned to the LAMBRA was determined as follows:

	A	**B**	**C**	**Combined**
Property Factor				
LAMBRA Property	$2,000,000	$1,000,000	$0	$3,000,000
Worldwide Property				$5,000,000
Apportionment %	40%	20%		60%
Payroll Factor				
LAMBRA Payroll	$2,000,000	$800,000	$0	$2,800,000
Worldwide Payroll				$4,000,000
Apportionment %	50%	20%		70%
Average Apport. % (Property + Payroll Factors)/2	45%	20%		65%
Business Loss				$(1,000,000)
LAMBRA NOL	$(450,000)	$(200,000)		$(650,000)

15540 Apportionment – Combined Groups

For taxable years beginning on or after January 1, 1998: For members of a combined group, the limitation will be based on the intrastate apportioned business income for each taxpayer doing business within the LAMBRA. The numerator of the apportionment formula will be based on each LAMBRA taxpayer's separate LAMBRA property and payroll amounts and the denominator will be based on each LAMBRA taxpayer's separate California property and payroll amounts.

For taxable years beginning before January 1, 1998: For members of a combined group, the income limitation will be based on the combined groups worldwide business income (before CA apportionment). The numerator of the apportionment formula will be based on each LAMBRA taxpayer's separate LAMBRA payroll and property amounts, and the denominator will be based on the combined groups worldwide payroll and property amounts.

For an example of apportionment under this method refer to EDAM 23440 General Provisions - Income Apportionment.

Example: For the taxable year ending 12/31/1999, parent corporation A has two subsidiaries, B and C. Corporations A and B operate within the LAMBRA. The combined group operates within and outside California and apportions its income to California using Schedule R. The combined group's business income apportioned to California was $1,000,000. Corporation A and B's share of California business income is $228,000 and $250,000 respectively. Corporation A and B's separate LAMBRA and separate California property and payroll factor amounts are shown below.

Business income apportioned to the LAMBRA was determined as follows:

	A	**B**
<u>Property Factor</u>		
LAMBRA Property	$1,000,000	$ 800,000
California Property	$1,000,000	$1,200,000
Apportionment %	100%	66.66%
<u>Payroll Factor</u>		
LAMBRA Payroll	$800,000	$ 800,000
California Payroll	$800,000	$1,000,000
Apportionment %	100%	80%
Average Apport. % (Property + Payroll	100%	73.33%

Factors)/2

Apportioned		
Business Income	$228,000	$250,000
LAMBRA Income	$228,000	$183,333

15550 Apportioning for Personal Income Tax Taxpayers

The following examples show the application of the apportioning rules to personal income tax taxpayers.

Example: Ray Smith is vice president of an S corporation that has two locations, one within a LAMBRA and one outside the LAMBRA. Eighty percent (80%) of the S corporation's business is attributable to the LAMBRA. (NOTE: This percentage was determined by the S corporation, using Worksheet V from the FTB 3807 Business Booklet, at the time the S corporation return was prepared). Ray divides his time equally (50% & 50%) between the two offices of the S corporation.

Mary Smith (Ray's spouse) works for the S corporation at its office located in the LAMBRA.

Ray and Mary Smith have the following 1999 items of California income and expense:

Ray's salary from the S corp.	$100,000
Mary's salary from the S corp.	75,000
Interest on savings account	1,000
Dividends	3,000
Schedule K-1 (100S) from the S corp.	
Ordinary Loss	200,000
LAMBRA business expense deduction	(5,000)*
Ray's unreimbursed employee expenses from Schedule A	(2,000)

*The LAMBRA business expense deduction is a separately stated item on Schedule K-1 (100S).

The Smith's LAMBRA loss is computed as follows:

Ray's LAMBRA salary ($100,000 x 50%)	$50,000
Mary's LAMBRA salary ($75,000 x 100%)	75,000
Pass-through ordinary loss from the S-Corp. ($200,000 x 80%)	(160,000)
LAMBRA business expense deduction from the S-Corp.	(5,000)
Ray's unreimbursed employee business expenses (2,000 x 50%)	(1,000)
Total LAMBRA loss	$(41,000)

NOTE: The standard deduction and personal or dependency exemptions are not included in the computation of the LAMBRA NOL since they are not related to trade or business activities.

15600 Carryover / Carryback

References 17276.1(a); 17276.5(a); 24416.1(a); 24416.5(a)

For each taxable years beginning on or after January 1, 1995, a qualified taxpayer engaged in a trade or business within a designated LAMBRA may elect to carryover 100% of its LAMBRA NOLs. No NOL carrybacks are allowed.

The NOLs may be carried over to each of the 15 taxable years following the year of loss, or until exhausted, whichever occurs first. If an NOL carryover remains after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing the LAMBRA income limitation, and for purposes of allowing the LAMBRA NOL deduction.

NOTE: Financial institutions, as defined in IRC § 585, 586, or 593, using bad debt reserve methods may carry the loss forward for a maximum of 5 taxable years.

15700 LAMBRA NOL Deduction - General Provisions

References 17276.5(a)(5); 17276.5(a)(6)(B); 24416.5(a)(6); 24416.5(a)(7)(B)

EDAM 15710 Business Income Activity Limitation
EDAM 15711 Property Factor – Income Apportionment
EDAM 15712 Payroll Factor – Income Apportionment
EDAM 15713 Apportioning for Personal Income Tax Taxpayers

The LAMBRA NOL deduction can only *offset business income attributable to operations of the taxpayer within the designated LAMBRA*.

In the event that a LAMBRA NOL deduction is allowable for any taxable year after the LAMBRA designation has expired, the LAMBRA will be deemed to remain in existence for the purpose of computing the business income limitation.

15710 Business Income Activity Limitation

References 17276.5(a)(6); 24416.5(a)(7)

If a business is located within and outside of a LAMBRA, the taxpayer must determine the portion of the California business income that is attributable to the LAMBRA.

- Business income is defined under the provisions of the Uniform Division of Income for Tax Purposes Act (UDITPA).
- Components of the factors are defined under the provisions of UDITPA.

For taxable years beginning on or after January 1, 1998, business income shall be apportioned to the LAMBRA by multiplying the taxpayer's total California source business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two (2).

For taxable years beginning before January 1, 1998, business income is apportioned to the LAMBRA by multiplying the worldwide business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two (2).

15711 Property Factor – Income Apportionment

The property factor is a fraction. The numerator of the property factor is the average value of the real and tangible personal property owned or rented and used or available for use by the taxpayer *within the LAMBRA* during the taxable year.

- For taxable years beginning on or after January 1, 1998, the denominator is the average value of all real and tangible personal property owned or rented and used or available for use by the taxpayer during the taxable year *within California*.
- For taxable years beginning before January 1, 1998, the denominator is the average value of all real and tangible personal property owned or rented and used or available for use during the taxable year *worldwide.*

Rented property is valued at eight (8) times the net annual rental rate. The net annual rental rate is the total rent paid for the property, less any subrental rates paid by subtenants.

15712 Payroll Factor – Income Apportionment

The payroll factor is a fraction. The numerator of the payroll factor is the total compensation paid to the taxpayer's employees working within the LAMBRA during the taxable year.

- For taxable years beginning on or after January 1, 1998, the denominator is the total compensation paid to employees working for the taxpayer *in California* during the taxable year.
- For taxable years beginning before January 1, 1998, the denominator is the total compensation paid to employees working *worldwide* during the taxable year.

Example - Two-factor apportionment: For the taxable year ending 12/31/99, Corp. A operates within and outside a LAMBRA. California business income of $13,000 needs to be apportioned to the LAMBRA. The following amounts apply to Corp. A's property and payroll:

LAMBRA Property	$40,000
CA Property	$100,000
LAMBRA Payroll	$5,000
CA Payroll	$10,000

LAMBRA Property/CA Property	=.40	
LAMBRA Payroll/CA Payroll	=.50	
	.90/2 = .45	LAMBRA Apportionment Factor

Business income	$13,000
Apportionment Factor	x 0.45
LAMBRA Business Income	$5,850

15713 Apportioning for Personal Income Tax Taxpayers

The following examples show the application of the apportioning rules to personal income tax taxpayers.

Example: Ray Smith is vice president of an S corporation that has two locations, one within a LAMBRA and one outside the LAMBRA. Eighty percent (80%) of the S corporation's business is attributable to the LAMBRA. (NOTE: This percentage was determined by the S corporation, using Worksheet V from the FTB 3807 Business Booklet, at the time the S corporation return was prepared). Ray divides his time equally (50% & 50%) between the two offices of the S corporation.

Mary Smith (Ray's spouse) works for the S corporation at its office located in the LAMBRA.

Ray and Mary Smith have the following 1999 items of California income and expense:

Ray's salary from the S corp.	$100,000
Mary's salary from the S corp.	75,000
Interest on savings account	1,000
Dividends	3,000
Schedule K-1 (100S) from the S corp.	
Ordinary income	40,000
LAMBRA business expense deduction	(5,000)*
Ray's unreimbursed employee expenses from Schedule A	(2,000)

*The LAMBRA business expense deduction is a separately stated item on Schedule K-1 (100S).

The Smith's LAMBRA income is computed as follows:

Ray's LAMBRA salary ($100,000 x 50%)	$50,000
Mary's LAMBRA salary ($75,000 x 100%)	75,000
Pass-through ordinary income from the S-Corp. ($40,000 x 80%)	32,000
LAMBRA business expense deduction from the S-Corp.	(5,000)
Ray's unreimbursed employee business expenses (2,000 x 50%)	(1,000)
Total LAMBRA income	$151,000

NOTE: The standard deduction and personal or dependency exemptions are not included in the computation of LAMBRA income since they are not related to trade or business activities.

15800 NOL Suspensions

References 17276.3(c); 24416.3(c)

NOTE: For taxable years beginning in 2002 and 2003, California has suspended the Net Operating Loss (NOL) carryover deduction. Taxpayers may continue to compute and carryover an NOL during the suspension period. The carryover period for suspended losses is extended by two years for losses incurred before January 1, 2002 and by one year for losses incurred after January 1, 2002 and before January 1, 2003. The deduction for disaster losses is not affected by the NOL suspension rules.

15900 Alternative Minimum Tax

References 17062; 23456

Taxpayers claiming a LAMBRA NOL deduction must also determine their NOL for alternative minimum tax purposes.